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**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.2904 of 2020

Date of Decision: 11.12.2023

Baljinder Singh and others

..... Petitioners

Versus

**Superintending Canal Officer, Upper Bhari
Doab Canal, Amritsar and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anil Chawla, Advocate
for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Dayal Partap Singh Randhawa, Advocate
for respondent No.3.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the order dated 20.09.2017 (Annexure P-3) passed by respondent No.2 whereby the application filed by the private respondents has been allowed ordering for restoration of the Khal and against the order dated 08.01.2020 (Annexure P-5) passed by respondent No.1, dismissing the appeal filed by the petitioners.

The present case has emanated from the impugned order dated 20.09.2017 (Annexure P-3) passed by respondent No.2 i.e.

Divisional Canal Officer, Jandiala Canal Division and the impugned order dated 08.01.2020 (Annexure P-5) wherein respondent No.1 i.e. Superintending Canal Officer has affirmed the order passed by the learned Divisional Canal Officer wherein application filed by respondents No.3 to 5 for reconstruction/reinstatement of the Scheme Khal (Drain) Mogha (outlet) Burzi-14878-Left Rajbah (Channel), Athwal, village Tapiala, Tehsil Baba Bakala, District Amritsar was accepted.

Learned counsel for the petitioners has submitted that the application filed by respondent No.3 on 04.05.2017 was allowed by respondent No.2 vide impugned order dated 20.09.2017. Aggrieved by the same, the petitioners filed an appeal before respondent No.1 on 01.11.2017. However, respondent No.1 has illegally dismissed the same vide order dated 08.01.2020 by upholding the impugned order passed by the learned Divisional Canal Officer i.e. respondent No.2. He has submitted that the impugned orders are in violation of the provisions of Section 30-FF of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as 'the Act'). He submits that as per mandate of the Act, there was no finding given whether the alleged demolished Khal was sanctioned by law or by agreement between the parties or it has been prescribed by way of easement. He submits that after filing of the application by respondent No.3, notices were issued and the petitioners suffered their statement, which is as follows:

“Statement of Gurmukh Singh son of Santa Singh, Hardev Singh son of Ajaib Singh, co-sharer Mogha Bhurji Rajbah Athwal, resident of village Tapijala, Tehsil Baba Bakala, District Amritsar.

Came present on the spot and stated that they are co-sharer of the aforesaid Mogha. The application given against us by Tej Sukhwinder Singh son of Ajit Singh that we have demolished the Khal irrigating their fields is absolutely wrong. In this Khal water is not flowing for the last 15-16 years. Lot of co-sharers are not using the water of this Khal. If the water comes in our fields, our fields being low the water damages our crops, therefore we neither want to use water nor ready for restoration of the Khal.”

He has submitted that the respondents authorities have not taken into consideration the statement made by the petitioners as mentioned above. He has submitted that the site plan considered is also incomplete. He submits that land of the petitioners is situated at a lower level and once the water would start in the Khal to be restored, their crop is likely to be damaged as this Khal is situated on a higher level. He has submitted that respondents No.3 to 5 have alternate source of water from their tubewell. He has relied upon the judgment passed by this Court in **“Gram Panchayat Lakho Wali, Tehsil Jalalabad, District Ferozepur vs. Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur”**, 2013(3) Law Heralds (P&H) 2183 and submits that the impugned orders being non speaking and cryptic deserve to be set aside by remanding the case with a direction to decide it afresh.

Per contra, learned counsel for respondent No.3 has opposed the submissions made by learned counsel for the petitioners. He has submitted that there is no discrepancy in the impugned orders passed by the learned Authorities below. He submits that on filing of the application by respondent No.3, proper opportunity was granted to the petitioners before passing the orders. He has submitted that as is evident from the record, the petitioners recorded their statements before respondent No.2 wherein they categorically agreed that they would have no problem if the Khal is restored. He submits that thereafter all the petitioners agreed for reconstruction/reinstatement of the Scheme Khal (Drain). He submits that the Zileadar had filed a detailed report after inspecting the spot along with concerned Patwari. He has submitted that the report prepared clearly established that the Scheme Khal (Drain) on the part of A-B, C-D was in running condition and the Part B-C-D is demolished. Thus, he submits that the orders have been passed on receiving the reports from the Zileadar which were prepared after taking into consideration the complete record and the spot inspection. He submits that the respondents are duly entitled for the water for irrigation from the drain and just because, they have their own tubewell, it cannot be a ground for rejecting their claim for restoration of the demolished Khal. He has submitted that there is no violation of the provisions under Section 30-FF of the Act as submitted by learned counsel for the

petitioners and thus, the petition being devoid of any merit deserves to be dismissed.

I have heard learned counsel for the parties and perused the material on record.

After hearing learned counsel for the parties and perusing the record, it is transpired that respondents No.3 to 5 are the co-sharers in the Scheme Khal (Drain) which has been alleged to have been demolished by the petitioners. On account of the same, application was filed for restoration and notices were issued to the petitioners by respondent No.2. Reports were sought from the Zildar. Accordingly, the Zildar along with concerned Circle Patwari inspected the spot on 19.05.2017 and submitted his report. It was duly established from the report that Khal was found to have been demolished. On hearing both the sides, the learned Divisional Canal Officer observed that the petitioners got recorded their joint statement and submitted that they have agreed for the reconstruction/reinstatement of the Scheme Khal after conducting of the demarcation.

Learned counsel for the petitioners has submitted before this Court that finding of the learned Divisional Canal Officer is factually incorrect to this effect as in the statement recorded by the petitioners, they have specifically denied having demolished the Khal. However, on perusal of the statement, it is apparent that though the petitioners have deposed that they have not demolished the Khal but

they have deposed that the water is not flowing in the Khal for the last about 15 to 16 years and if the water comes in their fields, their fields being at a lower level, their crops would be damaged. Thus, the existence of the Khal is not under dispute. The petitioners have themselves deposed that though the Khal exists but water is not flowing in the same from the last about 15 to 16 years. This statement of the petitioners corroborates the report submitted by the Zileadar as discussed above. From the perusal of the statutory provisions of Section 30 FF(2) of the Act, it is apparent that the Divisional Canal Officer may after making the necessary inquiry, restore the water course. As evident from the record, the Zileadar was directed to submit his report after carrying out the spot inspection, which was duly submitted and the grievances raised by the respondents were found to have been substantiated. Both the authorities on hearing both the sides and perusing the report and other relevant record had restored the demolished water course/Khal for the better irrigation of the fields.

The Judgments relied upon by learned counsel for the petitioners is distinguishable on the facts and circumstances of the present case. In the case relied upon by learned counsel for the petitioners, the existence of the demolished Khal was questioned. However in the present case, the same is not under dispute.

Hence, finding no merit in the present petition, the same is hereby dismissed. However as submitted by learned counsel for the

petitioners that land of the petitioners is at a lower level and in case the Khal is not maintained properly, there is a probability of their crop being damaged. Thus, this Court finds this argument raised by learned counsel for the petitioners to be genuine one. Accordingly, the respondents authorities are directed to ensure the proper maintenance of the Khal to be restored so as to ensure that no damage whatsoever is caused to the crops of the petitioners as their land is stated to be at lower level.

11.12.2023

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No